

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

In re CADEN C.,
A Person Coming Under the
Juvenile Court Law.

SAN FRANCISCO HUMAN
SERVICES AGENCY,
Plaintiff and Appellant,

v.

CHRISTINE C. et al.,
Defendants and Respondents;

CADEN C., a Minor,
Appellant

Case No. S255839

Court of Appeal Nos.
A153925
Consolidated with
A154042

San Francisco No.
JD153034

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After the Published Decision by the Court of Appeal
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**APPLICATION OF CALIFORNIA DEPENDENCY TRIAL
COUNSEL FOR LEAVE TO FILE *AMICUS CURIAE* BRIEF IN
SUPPORT OF RESPONDENT, CHRISTINE C.**

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CERTIFICATE OF INTERESTED ENTITIES OR PERSONS

Rule 8.208 of the California Rules of Court does not apply to appeals in juvenile cases. Still, the undersigned certifies there are no interested entities or persons to be listed under California Rules of Court rule 8.208.

Dated: November 27, 2019 Respectfully submitted,

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APPLICATION FOR LEAVE TO FILE AMICUS BRIEF AND TO PARTICIPATE IN ORAL ARGUMENT

TO THE HONORABLE TANI CANTIL-SAKAUYE, CHIEF JUSTICE, AND ASSOCIATE JUSTICES OF THE CALIFORNIA SUPREME COURT, pursuant to rule 8.200(c) of the California Rules of Court, leave is hereby requested to file the attached brief as amici curiae on behalf of California Dependency Trial Counsel in support of Respondent Christine C.'s Opening Brief on the Merits. California Dependency Trial Counsel are listed in the Appendix to the attached brief.

STATEMENT OF INTEREST¹

California Dependency Trial Counsel advocate on behalf of parents in the child welfare system and have a substantial interest in the outcome of this proceeding. As trial counsel, Amici are concerned with how this Court will decide whether a parent's progress in addressing the issues that led to dependency must be shown to meet the beneficial parental relationship exception in Welfare and Institutions Code section 366.26, subdivision (c)(1)(B)(i). As a parent's shortcomings in addressing dependency issues are a prerequisite to the section 366.26 hearing, it is fundamentally unfair to

¹ Amici affirm that no counsel for any party authored this brief in whole or in part; no party or party's counsel contributed money intended to fund preparing or submitting this brief; and no other person or entity contributed money to fund preparing or submitting this brief.

deny parents the exception's relief on that very basis. Amici are thus concerned that a requirement of parent progress will set an impracticable and unfair standard for parents hoping to meet the exception and will render the statute's relief from the termination of parental rights virtually illusory. Accordingly, Amici are interested in the outcome of this proceeding to prevent such a requirement from being approved by this Court.

In addition, Amici are interested in how this Court determines the extent to which parent progress in addressing dependency issues may factor into a trial court's decision on the beneficial relationship exception. As trial courts must determine the beneficial quality of the parent-child relationship, any facts considered by courts should be germane to assessing the interaction between parent and child and not merely on whether the parent has or has not made progress. Condoning the latter approach would lead to inaccurate decisions on the beneficial relationship exception as the parent-child relationship would not be fairly evaluated. As trial counsel for parents, Amici are thus invested in the outcome of this proceeding.

BRIEF OF AMICI CURIAE WILL ASSIST THE COURT

California Dependency Trial Counsel respectfully submit this brief will assist the Court in the following ways. First, this brief explains how a parent-focused inquiry into whether the beneficial relationship exception should apply can lead to inaccurate, inconsistent and unjust results for

children and families, and can render the exception's relief virtually illusory. Second, this brief argues that these concerns demonstrate the urgent need for a uniform standard based on the plain language of the statute and the well-established guidelines in *In re Autumn H.* (1994) 27 Cal. App. 4th 567, that clarifies the beneficial relationship exception should focus not solely on the parent but on the parent-child relationship. Amici believe its discussion of these issues will assist the Court in resolving the issues presented and in recognizing the importance of the accurate and fair application of the beneficial relationship exception to children and parents throughout California in dependency proceedings that threaten to terminate their fundamental family relationships.

CONCLUSION

For the foregoing reasons, California Dependency Trial Counsel respectfully ask that the Court grant its application for leave to appear as amici curiae and allow the attached brief to be filed.

Dated: November 27, 2019

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**AMICUS CURIAE BRIEF OF CALIFORNIA DEPENDENCY
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INTRODUCTION

At the Welfare and Institutions Code² section 366.26 hearing, the beneficial parent-child relationship exception³ is one of few remaining hopes parents have of preserving their fundamental relationships with their children. However, the exception's extraordinary relief is virtually illusory. As noted by the Fourth District, Third Division, the benefit exception "may be the most unsuccessfully litigated issue in the history of law." (*In re Eileen A.* (2000) 84 Cal.App.4th 1248, 1255, fn. 5 [noting that as one of the few issues appellate counsel have left, "it is almost always a loser"], disapproved on other grounds in *In re Zeth S.* (2003) 31 Cal. 4th 396, 414.)

That the exception has been so characterized should not be taken lightly. "Few consequences of judicial action are so grave as the severance of natural family ties." (*M.L.B. v. S.L.J.* (1996) 519 U.S. 102, 119 [117 S. Ct. 555, 136 L. Ed. 2d 473], quoting *Santosky v. Kramer* (1982) 455 U.S. 745, 787, REHNQUIST, J. dissenting.) Such decisions "involve the awesome authority of the State 'to destroy permanently all legal recognition of the parental relationship'" and "are among the most severe forms of state action." (*M.L.B. v. S.L.J., supra*, 519 U.S. 102, 127–128.)

² All further statutory references will be to the Welfare and Institutions Code unless otherwise indicated.

³ The beneficial parent-child relationship exception is found in section 366.26, subdivision (c)(1)(B)(i).

Given the grave consequences at stake at the section 366.26 hearing, “[a] parent’s interest in the accuracy and justice of the decision to terminate his or her parental status is, therefore, a commanding one.” (*Santosky v. Kramer* (1982) 455 U.S. 745, 759.) Furthermore, “[s]ince the State has an urgent interest in the welfare of the child, it shares the parent’s interest in an accurate and just decision.” (*Lassiter v. Department of Social Services of Durham County, N. C.* (1981) 452 U.S. 18, 27 [101 S.Ct. 2153, 68 L.Ed.2d 640].)

Yet, as will be explained below, case law has created onerous standards for determining when the beneficial relationship exception may apply with approaches that vary by jurisdiction. Most concerning to parents is that case law has shifted the focus of the inquiry towards the parent, with particular emphasis on the role the parent occupies to the child and, as demonstrated in the case at bar, progress made by the parent in addressing the issues that led to dependency. These cases have burdened parents with complicated criteria that has made the exception nearly impossible to meet.

There is an urgent need to rein in the case law on the beneficial relationship exception and establish a uniform approach for determining when the exception may apply in order to ensure accurate and just decisions for families throughout the state. California Dependency Trial Counsel as Amici thus respectfully request this Court to clarify the standards governing

the exception so that the focus of the inquiry remains on the parent-child relationship as indicated in the plain language of the statute and the well-established framework in *In re Autumn H.* (1994) 27 Cal. App. 4th 567.)

I. THE BENEFICIAL PARENT-CHILD RELATIONSHIP SHOULD BE DETERMINED BY THE QUALITY OF THE PARENT-CHILD RELATIONSHIP.

A. The Beneficial Parent-Child Relationship Exception

For the beneficial parent-child relationship exception to apply, the court must find a “compelling reason that termination would be detrimental to the child” because “[t]he parents have maintained visitation and contact with the child and the child would benefit from continuing the relationship.” (§ 366.26, (c)(1)(B)(i).) In essence, a court’s decision on the beneficial relationship exception is based on three factors: “whether the parent has maintained regular visitation, whether a beneficial parental relationship exists, and whether the existence of that relationship constitutes ‘a compelling reason for determining that termination would be detrimental to the child.’ [Citations.]” (*In re Breanna S.* (2017) 8 Cal. App. 5th 636, 647.)

As is apparent in the plain language of the statute and the analytical framework, the focus of the inquiry is on assessing the parent-child

relationship, not simply the parent. Consistent with the statutory language, in the seminal case *In re Autumn H.* (1994) 27 Cal. App. 4th 567 (*Autumn H.*)⁴, the Fourth District, Division One elaborately described the beneficial parent-child relationship as follows:

Interaction between natural parent and child will always confer some incidental benefit to the child. The significant attachment from child to parent results from the adult's attention to the child's needs for physical care, nourishment, comfort, affection and stimulation. [Citation] The relationship arises from day-to-day interaction, companionship and shared experiences. [Citation] The exception applies only where the court finds regular visits and contact have continued or developed a significant, positive, emotional attachment from child to parent.

(*In re Autumn H.*, *supra*, 27 Cal. App. 4th at p. 575.)

The *Autumn H.* court also provided a relationship-focused approach to balancing the interests at stake.

[T]he court balances the strength and quality of the natural parent/child relationship in a tenuous placement against the security and the sense of belonging a new family would confer. If severing the natural parent/child relationship would deprive the child of a substantial, positive emotional attachment such that the child would be greatly harmed, the preference for adoption is overcome and the natural parent's rights are not terminated.

(*In re Autumn H.*, *supra*, 27 Cal. App. 4th at p. 575.)

⁴ Appellant aptly noted that “[a] Westlaw ‘Citing References’ search for *Autumn H.* returned 4,208 appellate cases (published and unpublished) as of its 25th anniversary in August of 2019.” (ABOM, p. 59-60, fn. 10.)

These guidelines from *Autumn H.*, which are now firmly rooted in the law, focus the court's attention on the parent-child relationship and its benefit to the child. However, case law over the years has shifted the focus of the inquiry towards the parent by giving undue consideration to parents' progress in addressing the issues that led to dependency and by narrowly defining the "parental role" parents must occupy to their child. As a result, the exception's complicated and onerous standards have made the exception's relief virtually illusory.

B. Parents Are Not Required to Demonstrate Progress in Addressing the Issues That Led to Dependency in Order to Prove a Beneficial Parent-Child Relationship.

In the present case, the Court of Appeal's decision to reverse the juvenile court's decision to apply the beneficial relationship exception was primarily based on its finding that Mother had not made sufficient progress in addressing the issues that led to dependency. (*In re Caden C.* (2019) 34 Cal. App. 5th 87.) Fortunately, the parties hereto agree that parent progress is not required to meet the exception. (OBOM 7, 55; ABOM 7, 59-67; MBOM 8, 37-41.) The parties also agree that such progress or lack thereof can be a relevant consideration. (RBOM 6, 11; ABOM 59-67; MBOM 37-41.) There is disagreement, however, as to when such evidence is relevant and whether that evidence is considered in the second or third prong in the analytical framework.

As noted above, a court's decision to apply the beneficial relationship exception is based on three factors: "whether the parent has maintained regular visitation, whether a beneficial parental relationship exists, and whether the existence of that relationship constitutes 'a compelling reason for determining that termination would be detrimental to the child.' [Citations.]" (*In re Breanna S.* (2017) 8 Cal. App. 5th 636, 647, italics added.) According to this framework, the beneficial parent-child relationship is determined in the second prong.

As for when evidence of parent progress may be relevant, *Autumn H.* again offers guidance. To assist courts in determining the beneficial quality of the parent-child relationship, *Autumn H.* explained that the "exception must be examined on a case-by-case basis, taking into account the many variables which affect a parent/child bond," which logically include: "[t]he age of the child, the portion of the child's life spent in the parent's custody, the "positive" or "negative" effect of interaction between parent and child, and the child's particular needs." (*In re Autumn. H., supra*, 27 Cal. App. 4th at 576; *In re Angel B.* (2002) 97 Cal. App. 4th 454, 467.)

Accordingly, when a court considers a parent's progress in addressing the issues that led to dependency, it must focus on the "effect" of the parent's progress or lack thereof on the "interaction between the parent and child" and not merely on the fact that there is or is not progress.

Thus, parent progress in addressing the issues that led to dependency alone cannot be a prerequisite to meeting the exception because it fails to take into account the effect on the parent-child relationship.

Despite the agreement by all counsel hereto that parent progress is not required to meet the beneficial relationship exception, the Court of Appeal in *Caden C.* primarily based its decision on exactly that. First, the Court found, “No reasonable court would apply the beneficial relationship exception on this record of mother’s disengagement from treatment and case plan, inability or unwillingness to remain sober, and deficient insight regarding her parenting.” (*In re Caden C., supra*, 34 Cal. App. 5th at 112.) And second, one of the “overarching considerations” that guided the Court’s analysis was that “the juvenile court’s determination that mother had ‘substantially complied with her case plan’ and ‘continues her efforts to maintain her sobriety and address her mental health issues’ [was] not supported by the record.” (*Id.* at 110.) As is apparent in these statements, the Court considered Mother's lack of progress by itself to be a sufficient basis on which to deny application of the beneficial relationship exception.

The Court also based its decision on case law that similarly suggest the beneficial relationship exception is conditioned on parent progress. The Court made the point that “in cases where application of the beneficial relationship exception has been found or upheld, the parents were actively

involved in maintaining their sobriety or complying substantially with their case plan.” (*Caden C.*, *supra*, 34 Cal. App. 5th 87, 112.) However, while it is true these cases involved parents who demonstrated progress in issues that led to dependency, these considerations were not the sole underpinnings of their decisions. More importantly, none of the cases held that parent progress is a requirement.

For instance, in *S.B.*, although the court’s decision was based in part on its finding that father’s “full compliance with the case plan evidenced his constant devotion to the child’s welfare,” it also found that the child “loved her father, wanted their relationship to continue and derived some measure of benefit from his visits.” (*In re S.B.*, *supra*, 164 Cal. App. 4th at 301, cited in *In re Caden C.*, *supra*, 34 Cal. App. 5th at 112.)

Also in *Amber M.*, the court’s decision to reverse the denial of the exception was not solely based on the facts selectively cited by *Caden C.*, namely, that “mother had been clean for 372 days, was ‘progressing in treatment,’ was devoted to her children, and ‘did virtually all that was asked of her to regain custody.’” (*Caden C.*, *supra*, 34 Cal. App. 5th at 112.) Rather, the court in *Amber M.* summarized its finding as follows: “The common theme running through the evidence from the bonding study psychologist, the therapists, and the CASA is a beneficial relationship that

clearly outweighs the benefit of adoption.” (*In re Amber M.*, *supra*, 103 Cal. App. 4th at 690.)

In *In re Brandon C.* (1999) 71 Cal. App. 4th 1530, 1535, although the record showed the mother was participating in substance abuse treatment, the appellate court did not cite mother’s participation as a basis for its decision. Rather, the court concluded that the trial court’s attention was “focused, properly, on the existence of a relationship between parent and children, and the benefit to the children from continuing the relationship.” (*Id.* at 1538.)

In *In re E.T.* (2018) 31 Cal. App. 5th 68, 77, while the appellate court recognized that mother addressed her substance abuse issues and “did all she was asked to do,” it also found that “the children are ‘very tied to their mother’” and that “[t]here is no question that the [children] have a substantial and positive attachment to Mother such that terminating their familial relationship would cause them great harm.”

None of the cases cited in *Caden C.* established a clear rule requiring a parent to demonstrate progress in addressing the issues that led to dependency in order to meet the exception. However, these cases when cited collectively and characterized so narrowly as they were in *Caden C.*, are susceptible to the interpretation that parents must do exactly that in order to stand a chance at meeting the exception.

The parties hereto may agree that parent progress in addressing dependency issues is not required. However, unless and until there is a clear ruling on this, parents in courtrooms throughout the state have little assurance that trial judges and opposing counsel will refrain from holding them to such an unreasonable standard that focuses on the parent, not the parent-child relationship.

Moreover, it is fundamentally unfair to require parents to prove they have made progress in addressing dependency issues in order to meet the exception, particularly when there is no evidentiary nexus between such progress, or lack thereof, and the parent-child relationship. In such instances, evidence of the parent's shortcomings provides no insight on the nature and quality of the parent-child relationship. And as it is focused only on parents' shortcomings, the inquiry only serves to disparage parents.

Indeed, in section 366.26 hearings throughout the state, parents are subjected to arguments by opposing counsel focusing on their shortcomings and failures. More often than not, those arguments are based on the same evidence that resulted in the termination of reunification services four months prior⁵, and even on the facts that initially brought the case into

⁵ The section 366.26 hearing shall be held no later than 120 days from the termination of reunification services. (§ 366.21, subd. (e)(3); 366.21, subd. (g)(4); 366.22, subd. (a)(3).)

dependency. Hearings on whether to apply the beneficial relationship exception should not be occasions to rehash a parent's shortcomings in order to justify the termination of parental rights.⁶ Rather, they should be fair and just inquiries that accurately assess the benefits of preserving the parent-child relationship.

Amici humbly urge this Court to declare that the beneficial relationship exception does not require a parent to demonstrate progress in addressing the issues that led to dependency. Additionally, Amici submit that when a court considers a parent's progress in addressing dependency issues, it must adhere to the well-established guidelines in *Autumn H.* by focusing its attention, not solely on the parent, but on the "positive" or "negative" effect of interaction between parent and child. (*In re Autumn H.*, *supra*, 27 Cal. App. 4th at 576.)

C. A Related Problem Concerning Application of the Beneficial Relationship Exception is the Vague and Nearly Unattainable "Parental Role" the Parent Must Occupy.

Much like the issue of parent progress above, the standards that determine the "parental role" a parent must occupy in order to meet the

⁶ "It is not the purpose of the section 366.26 hearing to show parental inadequacy, which had to have been previously established, and there is no burden on the petitioning agency to show at the section 366.26 hearing that the parents are 'at fault.'" (*Cynthia D. v. Superior Court* (1993) 5 Cal.4th 242, 254.)

exception have become more focused on the parent than on parent-child relationship. As a result, parents are being measured by unattainable standards making the exception nearly impossible to meet. A correction is urgently needed.

Autumn H. made clear that a beneficial parent-child relationship is one that is “of parent and child,” not one that is of friends. (*In re Autumn H.*, *supra*, 27 Cal. App. 4th 567, 576.) Less than three months after *Autumn H.* was decided, the Sixth District agreed with the analysis in *Autumn H.* but went a step further and concluded that the parent-child relationship contemplated by the exception excludes parents who do not “stand in a parental role to the child.” (*In re Beatrice M.* (1994) 29 Cal. App. 4th 1411, 1418-1420 (*Beatrice M.*) Although a “parental role” logically relates to a “parent and child” relationship, the Court in *Beatrice M.* suggested an even stricter meaning. The Court’s conclusion that the parent-child relationship therein was insufficiently “parental” was based on its finding “that [the caregiver] occupied the *primary parental role* for the girls, and that their relationship with mother was akin to that of an extended family member.” (*Id.* at 1420, italics added.) Notably, *Autumn H.* neither mentioned the term “parental role” let alone “primary parental role.” Nevertheless, these terms which narrowly define the beneficial parent-child relationship took root.

Similar language appeared in *In re Amber M.* (2002) 103 Cal. App. 4th 681 (*Amber M.*). There, the Fourth District, Division One reversed the lower court's termination of parental rights because the mother met her burden of showing a beneficial relationship. (*Id.* at 689.) The record supporting the court's decision included a bonding study by a psychologist who opined that the mother and her child shared a "primary attachment" and a "primary maternal relationship" and that "[i]t could be detrimental to sever that relationship." (*Ibid.*) However, the children had been out of the mother's care for nearly two years and the psychologist admitted that the child "looked to Grandmother to fulfill her emotional and physical needs." (*Ibid.*) Ultimately, the court concluded that the beneficial parental relationship outweighed the benefit of adoption because, in part, two of the children "ha[d] a strong *primary bond* with [their mother]" and the youngest "was very strongly attached." (*Id.* at 690, italics added.)

Notably, the terms "primary parental role," "primary attachment" and "primary bond" do not appear in the statute or in the well-established guidelines in *Autumn H.* The statute simply directs courts to assess whether there is a beneficial relationship while *Autumn H.* elaborated that "the exception applies only where the court finds regular visits and contact have continued or developed a significant, positive, emotional attachment from child to parent." (*In re Autumn H., supra*, 27 Cal. App. 4th at 575.) Neither

requires a primary role, attachment or bond. Courts have thus erroneously suggested terms to the statute that do not belong. (*San Francisco Unified School Dist. v. San Francisco Classroom Teachers Assn.* (1990) 222 Cal.App.3d 146, 149 [in construing a statute, the court “cannot create exceptions, contravene plain meaning, insert what is omitted, omit what is inserted, or rewrite the statute”]; *In re Amanda D.* (1997) 55 Cal.App.4th 813, 821.) Thus, although a primary parental role, or primary attachment will evince a beneficial parent-child relationship, a showing of such is not required to meet the statute.

Furthermore, that the terms “primary attachment” and “primary bond” benefited the mother in *Amber M.* provides no solace to parents hoping to similarly meet the exception’s burden. Such terms as applied in the case set an impracticable standard. Few parents, if any, can obtain such a bonding study, let alone convince a trial court that they have a “primary attachment” or “primary bond” with their children particularly when, as in *Amber M.*, their children have been out of their care for two years and look to the caregiver for emotional and physical needs. Thus, holding parents to such standards makes the exception nearly impossible to meet.

Fortunately, one case has recognized that requiring parents to demonstrate a “primary attachment” in order to meet the beneficial relationship exception renders the exception meaningless. (*In re S.B.* (2008)

164 Cal.App.4th 289, 299 (*S.B.*)⁷; see also *In re C.B.* (2010) 190 Cal.App.4th 102, 124.) In *S.B.*, social workers advocating for adoption argued that the child’s “primary attachment was to her grandparents” who “provided day-to-day care” and that the grandmother “assumed the more parental role.” (*Id.* at 295.) To this, the Fourth District, Division One responded: “We reject the Agency’s position the continuing beneficial relationship exception does not apply unless the child has a “primary attachment” to the parent.” (*Id.* at 299.) The Court further explained: “We do not believe it is reasonable to require the parent of a child removed from parental custody to prove the child has a “primary attachment” to the parent, or to show the parent and the child have maintained day-to-day contact. If that were the standard, the rule would swallow the exception.” (*Ibid.*)

Although *S.B.* made clear that parents are not required to prove “primary attachment,” the term still persists. In *In re J.C.* (2014) 226 Cal. App. 4th 503, a mother relying on *S.B.* argued that “the law has departed from the *Autumn H.* line of cases ... and the benefit exception no longer

⁷ The Fourth District, Division One later clarified that “[t]he *S.B.* opinion must be viewed in light of its particular facts. It does not, of course, stand for the proposition that a termination order is subject to reversal whenever there is ‘some measure of benefit’ in continued contact between parent and child.” (*In re Jason J.* (2009) 175 Cal.App.4th 922, 937; *In re C.F.* (2011) 193 Cal.App.4th 549, 558–559.)

requires proof the child has a primary attachment to a parent or that the parent maintained day to day contact.” (*Id.* at 529.) The Fourth District, Third Division dismissed mother’s argument in two words: “Not so.” (*Ibid.*) Thus, parents in some jurisdictions are not assured that trial courts will refrain from requiring proof of a primary parental role, primary attachment or primary bond in order to meet the exception.

Moreover, the term “parental role,” even without the foregoing modifiers, is still open to narrow interpretations that make meeting the exception virtually impossible for parents. Considerations that have narrowly defined the “parental role” include: whether the parent currently meets the child’s daily needs (*In re C.B.* (2010) 190 Cal.App.4th 102, 126 [court “could properly observe that the children’s daily needs were being met by the aunt and uncle”]); whether the parent has “demonstrated an ability to provide [the child], over the long term, with a stable, safe and loving home environment” (*In re Marcelo B.* (2012) 209 Cal. App. 4th 635., 644); the likelihood a parent will be able to take custody of the child (*In re Anthony B.* (2015) 239 Cal.App.4th 389, 397 [“Father has not demonstrated any likelihood that he will be able to take custody of [the child] within any reasonable time or that alternative placements would be preferable”].); whether returning the child to [father] would result in another disruption in his life, further eroding his ability to develop trust and to bond with others”

(*In re Clifton B.* (2000) 81 Cal. App. 4th 415, 423); and whether the child “has needs only the [the parent] can satisfy.” (*In re Jason J.* (2009) 175 Cal.App.4th 922, 938.)

These are unattainable standards. To state the obvious, children are not living with their parents at the section 366.26 hearing; they are in the daily care of substitute caregivers. Parents who are only allowed to see their children in structured visitation have no realistic chance of proving they occupy the “primary parental role” or have the “primary attachment” or are meeting their children’s daily needs, or that their children have needs only they can meet. There also is no requirement that children can only have one person in the parental role. As was recognized in *S.B.*, “it is a self-evident proposition that at any one time a child may have more than one parent or person acting as a parent.” (*In re S.B., supra*, 164 Cal.App.4th at 300.) Furthermore, since returning children to parents is not an option at the section 366.26 hearing, courts should not consider the likelihood that the parents will take custody of their children, or whether parents can provide “a stable, safe and loving home environment” for the child, or whether returning the child would cause the child “another disruption.”

These concerns are not academic. Amici as trial counsel grapple with such terms in trial courts statewide on a daily basis. And it makes no difference that the narrow interpretations of the parental role cited above

were dicta or were not the central underpinnings in their cases.⁸ Courts and practitioners naturally compare the parents before them with the parents in case law. So long as the term “parental role” is susceptible to such unreasonable interpretations, parents in trial courts will continue to be held to varying, elusive and unattainable standards that render the exception meaningless.

CONCLUSION

The beneficial parent-child relationship exception reflects the Legislature’s recognition that a parent and child may share a relationship so beneficial that it outweighs the benefits of adoption. The exception is “a final check to ensure termination of parental rights is in the best interests of the minor and is the least detrimental alternative.” (*In re Tabatha G.* (1996) 45 Cal. App. 4th 1159, 1165.)

As explained above, the standards that determine this “final check” are in urgent need of clarification and uniformity. The importance of having uniform standards to ensure accurate decisions on the exception cannot be understated. Decisions to terminate parental rights “involve the awesome

⁸ Illustrating the influence of dicta, Appellant argued in its Brief on the Merits, “While the court’s statement may be dicta, it represents a longstanding recognition that the juvenile (sic) does concern itself with “parental inadequacies” when considering the exception.” (ABOM, p. 61.)

authority of the State ‘to destroy permanently all legal recognition of the parental relationship’” and “are among the most severe forms of state action.” (*M.L.B. v. S.L.J.*, *supra*, 519 U.S. 102, 127–128.)

Given what is at stake, “[a] parent’s interest in the accuracy and justice of the decision to terminate his or her parental status is, therefore, a commanding one.” (*Santosky v. Kramer* (1982) 455 U.S. 745, 759.)

Furthermore, “[s]ince the State has an urgent interest in the welfare of the child, it shares the parent’s interest in an accurate and just decision.”

(*Lassiter v. Department of Social Services*, *supra*, 452 U.S. 18, 27.) Thus, parents who seek to meet the beneficial relationship exception in order to avoid the termination of parental rights deserve fair and uniform standards that are commensurate with the severity of the state action involved.

Amici are fully mindful that at the section 366.26 hearing, the Legislature’s first choice is adoption (*In re Jasmine D.* (2000) 78 Cal. App. 4th 1339, 1348); that “by the time termination is possible under our dependency statutes the danger to the child from parental unfitness is so well established that there is no longer ‘reason to believe that positive, nurturing parent-child relationships exist’” (*Cynthia D. v. Superior Court* (1993) 5 Cal.4th 242, 256); and that “[t]he statutory exceptions merely permit the court, in *exceptional circumstances* [Citation] to choose an

option other than the norm, which remains adoption. (*In re Celine R.* (2003) 31 Cal.4th 45, 53, italics in original.)

Yet, despite such language, the Legislature nevertheless recognizes that there are parent-child relationships worth preserving. Even though application of the exception involves “exceptional circumstances,” it cannot be presumed that the Legislature intended for its recognition of beneficial parent-child relationships to be memorialized as a failure in a footnote. (*In re Eileen A.* (2000) 84 Cal.App.4th 1248, 1255, fn. 5.)

For all the foregoing reasons, Amici respectfully request this Court to clarify the standards courts use to determine the beneficial parent-child relationship exception; specifically, to declare that parent progress in addressing the issues that led to dependency is not a prerequisite to meeting the statute; and to clarify that when courts consider parent progress or any other factor such as “the parental role,” it adhere to the well-established guidelines in *Autumn H.* by focusing its attention, not solely on the parent, but on the “positive” or “negative” effect of interaction between parent and child. (*In re Autumn. H., supra*, 27 Cal. App. 4th at 576.)

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Dated: November 27, 2019

Respectfully submitted,

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APPENDIX A: Description of Amici Curiae
California Dependency Trial Counsel

Orange County Public Defender's Office established in 1944, is the second largest institutional defender's office in the state and operates in the fifth largest court system in the country. The Orange County Public Defender's Juvenile Dependency Unit represents parents in dependency proceedings under an agreement with the Orange County Superior Court.

Los Angeles Dependency Lawyers, Inc. ("LADL") is an Internal Revenue Code, section 501 (c)(3) nonprofit organization. LADL is an umbrella organization with attorneys in established law offices who are appointed by the Superior Court to represent parents in juvenile dependency proceedings in Los Angeles County since 2007, and in San Diego County since 2016. LADL represents over 21,000 parents in both counties.

Richard A. Ciummo & Associates has been providing indigent legal defense services since 1988. Our mission is to ensure that our clients receive high quality legal representation and that their constitutional rights are safeguarded throughout their legal proceedings. We currently provide such legal services in five counties in California, including Fresno, Merced, Madera, Calaveras and Amador. We provide representation in adult criminal matters (felonies and misdemeanors), juvenile matters (both delinquency and dependency), and in contempt proceedings.

The Private Defender Program (PDP) was established in 1968 by the San Mateo County Bar Association, a non-profit corporation governed by a 15-member Board of Directors, in order to fulfill the Bar Association's promise to provide zealous representation to all those who could not otherwise afford it. The Private Defender Program is appointed by the San Mateo County Superior Court to represent all persons financially eligible for the appointment of counsel at public expense, including but not limited to: persons accused of all felonies and misdemeanors, juveniles in delinquency cases, juveniles and parents in dependency cases, and cases brought pursuant to the provisions of the Lanterman-Petris-Short Act (LPS).

East Bay Family Defenders (“EBFD”) is an Internal Revenue Code section 501(c)(3) nonprofit public benefit corporation providing court-appointed legal representation to parents, guardians, and children involved in Alameda County Juvenile Dependency Court. EBFD practices in an evidence-based interdisciplinary model, employing attorneys alongside social workers and peer parent advocates to address the root causes of system intervention and support families to successfully exit the system.

Parent Advocates of Sacramento and Dependency Associates of Sacramento have been representing parents and children in dependency proceedings for 20 years. Under our administrator, the Law Office of Dale S. Wilson, we provide representation for all parents in Sacramento County, as well as, conflict counsel for minors.

Dependency Advocacy Center (“DAC”) is an Internal Revenue Code section 501(c)(3) nonprofit organization that provides legal services to indigent parents and children involved with Santa Clara County’s juvenile dependency system. Advocacy at DAC involves a three-pronged approach: (1) providing a skilled interdisciplinary team to offer holistic client support, (2) encouraging system improvement through innovative programming and child welfare best practices, and (3) employing early intervention strategies to help prevent the need for initial or prolonged system involvement.

Juvenile Defense Panel (“JUVDP”) is an umbrella organization contracted by the Judicial Counsel of California, with attorneys in established law offices who are appointed by the Superior Court to represent parents in juvenile dependency proceedings in Riverside County. JUVDP represents over 5000 parents

Friedman & Cazares, LLP, and its prior legal entities has been providing indigent legal defense services for over 35 years. We represent clients in San Bernardino County juvenile dependency and delinquency matters. Our firm strives to ensure that parents in dependency proceedings receive high quality legal representation and that their constitutional rights are safeguarded throughout their legal proceedings.

CERTIFICATE OF WORD COUNT

I, Brian Okamoto, hereby certify that pursuant to California Rule of Court, rule 8.360(b)(1), the enclosed brief was produced using 13-point Roman type font and has approximately 6,872 words, including footnotes, based on the word count of Microsoft Word, the computer program used to prepare this brief.

Executed this 27th day of November, 2019, in Orange, California.

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ORANGE COUNTY PUBLIC DEFENDER
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CERTIFICATE OF SERVICE

In re Caden C., S255839

I Cristal Sanchez hereby declare: I am employed in the County of Orange, State of California. I am over the age of 18 and not a party to the within action. My business address is 801 Civic Center Drive West, Suite 400, Santa Ana, CA 92701. On November 27, 2019, I served a true and correct copy of the APPLICATION OF CALIFORNIA DEPENDENCY TRIAL COUNSEL FOR LEAVE TO FILE AMICUS CURIAE BRIEF IN SUPPORT OF RESPONDENT, CHRISTINE C., together with a copy of the BRIEF OF AMICUS CURIAE IN SUPPORT OF RESPONDENT CHRISTINE C., by placing copies thereof in a sealed, fully pre-paid envelope for collection with FedEx, addressed as follows:

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County and City of San Francisco
Hon. Monica Wiley
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San Francisco, CA 94102

California Court of Appeal
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I declare under penalty of perjury that the foregoing is true and correct. Executed this 27th day of November, 2019, at Orange, California.

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